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BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

CAPTAIN RAYMOND L. LESON,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT  
OF ECOLOGY,

Respondent.

PCHB No. 86-110

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

This matter is the appeal of a \$30,000 civil penalty which respondent has assessed against the appellant for allegedly causing an oil spill.

The matter came on before the Pollution Control Hearings Board, Wick Dufford, Chairman, Lawrence J. Faulk, Member and Judith A. Bendor, Member. William A. Harrison, Administrative Appeals Judge, presided.

1 The hearing was conducted at Port Angeles on September 29 and 30,  
2 1987, and at Seattle on October 5 and 7, 1987, and at Lacey on  
3 November 10 and December 21, 1987.

4 Appellant appeared by his attorney, James F. Whitehead III.  
5 Respondent appeared by V. Lee Okarma Rees, Assistant Attorney  
6 General. Reporter Gene Barker provided court reporting services.  
7 Respondent elected a formal hearing pursuant to RCW 43.21B.230.

8 Witnesses were sworn and testified. Exhibits were examined. The  
9 Board and Administrative Appeals Judge viewed the site of the incident  
10 in the company of the parties. Opposing briefs were filed on March 1,  
11 1988. From testimony heard and exhibits examined, the Pollution  
12 Control Hearings Board makes these

#### 13 FINDINGS OF FACT

##### 14 I

15 This matter concerns a voyage of the ARCO Anchorage in December,  
16 1985. The ARCO Anchorage is a large and modern oil tank vessel in the  
17 service of the Atlantic Richfield Company.<sup>1</sup>

##### 18 II

19 At the time in question, the ARCO Anchorage was laden with crude  
20 oil which it received at Valdez, Alaska, and it was en route to the  
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22 <sup>1</sup> The ARCO Anchorage is 883 feet in length with a breadth of 138  
23 feet. It is listed at 120,266 deadweight tons, with the capacity to  
24 transport a maximum cargo of nearly 40 million gallons of oil in its  
25 tanks. It was built and launched in the mid-1970's.

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Atlantic Richfield oil terminal at Cherry Point, Washington. It was to deliver its cargo there.

### III

By the time ARCO Anchorage had entered the Strait of Juan de Fuca, the oil terminal at Cherry Point determined that it temporarily had no place to berth the vessel because of other ships ahead of it. The terminal therefore sent a message to the master of ARCO Anchorage, Captain Robert C. Sutherland, advising him to layover at anchor in Port Angeles Harbor. The layover was expected to last only a few hours.

### IV

The ARCO Anchorage, upon entering Port Angeles Harbor, was required by federal maritime law to be under the control of a federally licensed pilot.<sup>2</sup> For that reason, Captain Sutherland requested a federal pilot from the Port Angeles Pilot's Association.

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<sup>2</sup> 46 U.S.C. 8502 provides:

#### Federal pilots required

(a) Except as provided in subsection (g) of this section, a coastwise seagoing vessel shall be under the direction and control of a pilot licensed under section 7101 of this title [46 USCS Section 7101] if the vessel is --

(1) not sailing on register;

(2) underway;

(3) not on the high seas; and

(4)(A) propelled by machinery and subject to inspection under part B of this subtitle [46 USCS 3101 et seq.]; or  
(B) subject to inspection under chapter 37 of this title [46 USCS Section 3701 et seq.].

1 The pilot assigned was appellant, Captain Raymond L. Leson.

2 V

3 Captain Leson possessed a federal pilot's license (No. 007784)  
4 authorizing him to pilot the largest ships throughout Puget Sound. He  
5 first qualified as a federal pilot in 1977, so had eight years  
6 experience in that capacity at the time in question. The total of his  
7 maritime experience in all ranks, however, encompasses some 50 years.  
8 From 1980 to the time in question he had piloted ARCO Anchorage on  
9 seven prior occasions.

10 VI

11 Captain Leson rode the pilot's boat to the ARCO Anchorage which he  
12 boarded at approximately 1500 hours (3:00 PM) on December 21, 1985.  
13 The vessel was then east bound in the Strait of Juan de Fuca. Captain  
14 Leson received a verbal briefing from Captain Sutherland in which the  
15 draft of the vessel was accurately described as 51 feet.. Captain  
16 Leson then took up a position on the bridge within the "house" of the  
17 vessel and assumed the Conn, or control, of the ARCO Anchorage.  
18 Captain Sutherland also stationed himself on the bridge, together with  
19 the following members of his crew: Chief Mate Burns, observing,

20  
21 Subsection (g) refers to Alaskan waters not at issue here. Enrolled  
22 vessels are those "engaged in domestic or coastwise trade or used for  
23 fishing" whereas registered vessels are those engaged in trade with  
24 foreign countries. Douglas v. Seacoast Products, Inc., 431 U.S. 265,  
25 272-273, 52 L.Ed.2d 304, 97 S.Ct. 1740 (1977). Chapter 37 of title 46  
26 USC makes "tank vessels" subject to inspection. "Tank vessel" means  
27 "a vessel that is constructed or adapted to carry, or that carries,  
oil or hazardous material in bulk as cargo or cargo residue and that:

1 Second Mate Pinon at the helm and Able Seaman Hawkins at the throttle

2 VII

3 Port Angeles Harbor is an east facing pocket of water formed by  
4 Ediz Hook. The Harbor's deeper water is on its north side adjacent to  
5 Ediz Hook where depths range from 20 to 30 fathoms (120 to 180 feet).  
6 In contrast, the Harbor's south side holds shallower water. A line  
7 connecting the 10 fathom soundings on a standard navigation chart  
8 (U.S. Department of Commerce, No. 18468) shows that the southern 40%  
9 (approximate) of the Harbor's surface area contains depths less than  
10 10 fathoms (60 feet).

11 VIII

12 As the ARCO Anchorage proceeded east bound in the Strait of Juan  
13 de Fuca, Captain Leson ordered a hard right rudder and half-ahead so  
14 as to round Ediz Hook and enter Port Angeles Harbor. He maintained  
15 that rudder and speed order for 13 minutes, and thereby entered the  
16 Harbor approximately at the mid-point of its mouth, so far as surface  
17 area is concerned.

18 IX

19 When a heading roughly to the southwest was reached (approximately  
20 243 degrees) at 1617 (4:17 PM), Captain Leson ordered hard left rudder.

- 21 \_\_\_\_\_
- 22 (A) is a vessel of the United States;  
23 (B) operates on the navigable waters of the United States; or  
24 (C) transfers oil or hazardous waste in a port or place  
25 subject to the jurisdiction of the United States."

26 46 USC Section 2101 (39).

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1 At this command, the vessel was in approximately 15 fathoms of water  
2 (90 feet). The vessel responded well to the hard left rudder order,  
3 and began to swing to a more southerly course (approximately 205  
4 degrees). Captain Leson then ordered half-astern.

5 X

6 As is normal, the vessel maintained headway even after the  
7 half-astern order was given and executed. Captain Sutherland  
8 developed concern at this point about proceeding any further south  
9 into the Harbor. Acting on this concern he fixed the ship's position,  
10 by radar, and determined that position on a chart at 1622 (4:22 PM).  
11 The vessel was then in 13 fathoms of water (78 feet) making headway to  
12 the south toward shallower water. Captain Sutherland then addressed  
13 Captain Leson by saying, "Are you happy with this spot?" This was  
14 understood by both officers to be a question about whether to drop  
15 anchor. Captain Leson replied "Yes" or "Let go." The order was  
16 acknowledged on the bow, and the starboard anchor was released.

17 XI

18 Despite the anchor's release at approximately 1623 (4:23 PM), a  
19 stuck brake delayed the dropping of the anchor until 1625 (4:25 PM)  
20 when the brake was unstuck by crew members. When the anchor was  
21 dropped, the vessel retained headway in approximately 11 fathoms of  
22 water (66 feet) and proceeded further southward into shallower water.

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XII

Shortly after the anchor was dropped, the vessel achieved sternway due to the earlier half astern order. Its movement was also to port due to the normal backing movement of this single screw vessel. The movement to port was compounded by the hard left rudder position. Between 1627 (4:27 PM) and 1629 (4:29 PM) when the ship was in approximately 8 fathoms of water (48 feet), all on the bridge heard a succession of three loud "bangs". Although the tidal level added 1 1/2 feet of water to the 48 foot chart sounding where the vessel was located, this total of 49 1/2 feet of water was insufficient to accommodate the 51 foot draft of the vessel. Thus the "bangs" signaled that the ARCO Anchorage had gone aground in shallow water on the periphery of the Harbor.

XIII

The grounding fractured the bottom of the vessel's hull at a place some 124 feet forward of the house. Damage to the hull took the form of a concave "tunnel" running 41 feet diagonally from the turn of the bilge inboard and forward, indicating that movement of the vessel was backing and moving to port at the time of impact. The 1 3/8" steel plate of the hull was fractured at two places within the damage tunnel. Being a single-hull vessel, these fractures opened two cargo tanks resulting in the spillage of crude oil into the waters of the Harbor.

XIV

Fracturing of the hull's steel plate and the metal scoring which also occurred indicate that the damage was done by an embedded rock capable of resisting the vessel's approach and of a hardness comparable to that of the hull's plate. Divers searching the bottom in the area of the grounding did not indentify a specific rock, but found rocks large enough to have done the damage.

XV

As oil welled up along the port side of the vessel, Captain Sutherland relieved Captain Leson of his responsibilities as pilot. For some two hours, Captain Sutherland concentrated on shifting oil from tanks he believed to be fractured to others he believed to be sound. Despite the availability of oil containment boom on Ediz Hook, no apparent effort was made to deploy that boom by either Captain Sutherland or government officers when the incident first occurred. Captain Sutherland requested oil containment boom at 1825 (6:25 PM), two hours after the spill began. Placement of the boom began at 1910 (7:10 PM) and was completed around 2130 (9:30 PM).

XVI

Approximately 239,000 gallons of crude oil entered the water from the fractured hull of the ARCO Anchorage. During the first night, the concentrated quantities of oil posed a serious danger of fire or explosion. In time, the oil disbursed eastward towards Dungeness Spit



1 and westward towards the mouth of the Strait of Juan de Fuca, a  
2 distance of some 50 miles. Some 4,000 birds of many kinds died from  
3 the oil. Clams in the beds in the vicinity did not reproduce at  
4 normal rates for a year after the spill. The loss would have been  
5 substantially greater and more enduring but for multi-million dollar  
6 oil clean-up paid for by the Atlantic Richfield Company.

7 XVII

8 Respondent Washington State Department of Ecology (DOE) assessed  
9 civil penalties of \$60,000 each against appellant Captain Raymond L.  
10 Leson, and the Atlantic Richfield Company for their roles in the  
11 grounding of the ARCO Anchorage. Following a determination by DOE  
12 that the spill in question occurred within the course of one day,  
13 rather than two days, the civil penalties assessed against both  
14 Captain Leson and the Atlantic Richfield Company were each mitigated  
15 by DOE to the maximum amount for a spill occurring in a single day;  
16 namely, \$30,000. Atlantic Richfield Company paid its \$30,000 civil  
17 penalty. Captain Leson now appeals from the \$30,000 civil penalty  
18 assessed against him by DOE. His appeal was filed before us on  
19 June 30, 1986.

20 XVIII

21 While it is indisputable that the ARCO Anchorage went aground in  
22 Port Angeles Harbor, Captain Leson urges strenuously that the hull was  
23 fractured in deep water before the grounding, at a locale where no  
24

1 encounter with an underwater obstacle could reasonably have been  
2 foreseen. He further maintains that, following this deep water  
3 impact, the vessel drifted aground. Nonetheless, the preponderance of  
4 the evidence before us is to the contrary and consistent with the  
5 findings reached above that the grounding, fracturing of the hull and  
6 oil spillage were simultaneous. We summarize in the ensuing finding  
7 the chief evidence which precludes the deep water collision theory  
8 advanced by Captain Leson.

9 XIX

10 1. The Nature of the Damage to the Hull.

11 As we have found, above, the damage to the hull of the ARCO  
12 Anchorage took the form of a linear "tunnel" running from the turn of  
13 the bilge inboard and forward. The direction and angle of this damage  
14 is consistent with the vessel backing to port as it did in shallow  
15 water at the time of grounding (See, Finding of Fact XII, above.)  
16 This direction and angle of damage is inconsistent with the vessel  
17 making headway as it did in deep water when the erstwhile collision  
18 would have occurred. (See, Findings of Fact X and XI, above.)

19 2. The Mechanical Course Recorder.

20 The ARCO Anchorage was equipped with a mechanical course recorder  
21 at the time in question. It produces its record via an ink stylus  
22 which places a line on a roller-fed paper graph. In the course of our  
23 deliberations, we have examined the original paper graph of the ARCO  
24 Anchorage for the time in question. The graph is consistent with an  
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1 untroubled approach followed by a grounding. The graph is  
2 inconsistent with any collision or similar disruption antecedent to  
3 the grounding. Moreover, while we are aware of Captain Leson's  
4 contention that the course recorder was tampered with by unknown  
5 persons, we find neither tampering marks on the original course  
6 recorder graph itself, nor other substantial evidence supporting this  
7 contention.

8 3. Time of the "Bangs".

9 The fracturing of the hull of the ARCO Anchorage was audible as a  
10 succession of three loud "bangs." These occurred between 1627 (4:27  
11 PM) and 1629 (4:29 PM). (See, Finding of Fact XII, above.) The United  
12 States Coast Guard Vessel Traffic System (VTS) fixed the vessel's  
13 position a few minutes later at 1636 (4:36 PM) when the casualty was  
14 reported to VTS. This VTS fix shows the vessel to be at grounding  
15 depths. Meanwhile, the ship's course recorder graph reflects no  
16 change in the ship's heading from the approximate time that the  
17 "bangs" were heard until the VTS fix. This is consistent with an  
18 impact at grounding. This is inconsistent with an impact in deeper  
19 water followed by drifting as the "bangs" would have been heard  
20 earlier in time, rather than at the approximate moment when the ship's  
21 heading ceased to change.

22 We find no merit in the contention that the hull of the ARCO  
23 Anchorage was fractured before the grounding.

1 XX

2 Any Conclusion of Law deemed to be a Finding of Fact is hereby  
3 adopted as such. From these Findings of Fact, the Board makes these  
4 CONCLUSIONS OF LAW

5 I

6 The State Water Pollution Control Act provides, with particular  
7 regard to oil, that:

8 "Any person who intentionally or negligently  
9 discharges oil, or causes or permits the entry of the  
10 same shall incur, in addition to any other penalty as  
11 provided by law, a penalty in an amount of up to twenty  
12 thousand dollars for every such violation, and for each  
13 day of a continuing violation; said amount to be  
14 determined by the director after taking into  
15 consideration the gravity of the violation, the previous  
16 record of the violator in complying or failing to comply  
17 with the provisions of chapter 90.48 RCW, and such other  
18 considerations as the director deems appropriate."  
19 RCW 90.48.350 (Emphasis added.)

20 The terms "discharge" and "entry" are with reference to "waters of  
21 the state" of Washington which include salt water. RCW 90.48.315(11).

22 II

23 Negligence.

24 Negligence is committed whenever there is a failure to exercise  
25 the ordinary care which a reasonable person would exercise in the  
26 circumstances. Atlantic Richfield Company v. State Department of  
27

1 Ecology, PCHB No. 298 (1977).<sup>3</sup> In piloting the vessel ARCO  
2 Anchorage into Port Angeles Harbor on December 21, 1985, appellant  
3 Captain Raymond L. Leson, issued a series of rudder and engine  
4 commands which, given the vessel's position at the time of these  
5 orders, resulted in the grounding of the vessel. Such conduct was  
6 below the standard of reasonable or ordinary care in the circumstances  
7 and constituted negligence.

8 III

9 Causation.

10 Causation, or proximate cause, means a cause which in direct  
11 sequence unbroken by any new, independent cause, produces the event  
12 complained of and without which such event would not have happened.

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15 

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3 Washington Pattern Jury Instructions (Civil)  
16 WPI 10.01:

17 "Negligence is the failure to exercise ordinary care. It  
18 is the doing of some act which a reasonably careful person would  
19 not do under the same or similar circumstances or the failure to  
do something which a reasonably careful person would have done  
under the same or similar circumstances.

20 WPI 10.02:

21 "Ordinary care means the care a reasonably careful person  
22 would exercise under the same or similar circumstances."

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1 Atlantic Richfield Company, supra.<sup>4</sup> Captain Leson's orders while  
2 pilot of the ARCO Anchorage directly produced the grounding which  
3 resulted in the oil spill. But for such negligence the spill would  
4 not have occurred. Thus Captain Leson caused the oil spill unless  
5 that causation was broken by a new, independent cause.

6 IV

7 Causation Not Broken by New, Independent Cause.

8 Appellant urges three principal causes of the oil spill aside from  
9 his own actions. These are 1) the failure of the ship's master to  
10 exercise his retained authority to countermand the pilot's orders, 2)  
11 the failure of the ship's owners to place oil containment booms until  
12 some 2 1/2 hours after the spill began, and 3) the delay in dropping  
13 the anchor caused by the stuck brake. With regard to a new,  
14 independent and thus superseding cause we are guided by the rule in  
15 Campbell v. ITE Imperial Corp., 107 Wn. 2d 807, 812-813, 733 P.2d 969  
16 (1987) and cases cited therein:

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19 <sup>4</sup> Washington Pattern Jury Instruction (Civil) WPI 15.01

20 "The term 'proximate cause' means a cause which in  
21 direct sequence, unbroken by any new, independent cause, produces  
22 the event complained of and without which such event would not  
23 have happened."

1 Section 440 of Restatement (Second) of Torts  
2 (1965) defines superseding cause as "an act of a third  
3 person . . . which by its intervention prevents the  
4 actor from being liable for harm to another which his  
5 antecedent negligence is a substantial factor in  
6 bringing about." In determining whether an intervening  
7 act constitutes a superseding cause, the relevant  
8 considerations under Restatement (Second) of Torts  
9 Section 442 (1965) are, inter alia, whether (1) the  
10 intervening act created a different type of harm than  
11 otherwise would have resulted from the actor's  
12 negligence; (2) the intervening act was extraordinary or  
13 resulted in extraordinary consequences; (3) the  
14 intervening act operated independently of any situation  
15 created by the actor's negligence. Accord, Herberg v.  
16 Swartz, 89 Wn. 2d 916, 927-28, 578 P.2d 17 (1978).  
17 [Emphasis in original.]

18 Pursuant to Section 447(a) of Restatement (Second)  
19 of Torts, even if the intervening act of the third  
20 person constitutes negligence, that negligence does not  
21 constitute a superseding cause if "the actor at the time  
22 of his negligent conduct should have realized that a  
23 third person might so act." In fact,

24 If the likelihood that a third person may act in a  
25 particular manner is . . . one of the hazards which  
26 makes the actor negligent, such an act whether  
27 innocent, negligent, intentionally tortious, or  
criminal does not prevent the actor from being liable  
for harm caused thereby.

Restatement (Second) of Torts Section 449 (1965). See  
also Restatement (Second) of Torts Section 447, comment  
on Clause (a) (1965).

See also, Northwest Airlines, Inc. v. State Department of Ecology,  
PCHB No. 77-9 (1977).

In retrospect, the actions of the ship's master before the spill  
and those of the ship's owner after the spill might not be deemed  
exemplary. However, these actions did not create a different type of  
harm, nor were such actions extraordinary nor independent of  
appellant's negligence. Indeed, appellant should have realized that

1 the ship's master and owner might so act. Using the language in  
2 Herberg v. Swartz, 89 Wn.2d 916, 928, 578 P.2d 17 (1978), negligence,  
3 if any, by either the ship's master or owner was "activated" by  
4 appellant's own negligence in issuing his rudder and engine commands.

5 Finally, the delay in dropping the anchor was not a substantial  
6 factor in the grounding, given the lateness of the command to drop the  
7 anchor.

8 We conclude that there were no actions by third persons  
9 constituting any new, independent cause that superseded the  
10 appellant's negligent causation of the spill.

11 V

12 Entry.

13 Port Angeles Harbor and adjacent waters, into which the oil was  
14 spilled, are waters of the State of Washington. See RCW 90.48.315(11).

15 VI

16 Appellant Captain Raymond L. Leson violated RCW 90.48.350 (\$20,000  
17 maximum) on December 21, 1985, by negligently causing the entry of oil  
18 into waters of the State of Washington.

19 VII

20 In addition to the oil spill penalty under RCW 90.48.350 assessed  
21 on a negligence basis the State Water Pollution Control Act provides  
22 for penalties for water pollution generally, on a strict liability  
23



1 basis. The Act provides:

2 "Every person who:

3 . . .

4 . . .

5 (3) Violates the provisions of RCW 90.48.080 or  
6 other sections of this chapter or regulations or  
7 orders adopted or issued pursuant thereto, shall  
8 incur, in addition to any other penalty as  
9 provided by law, a penalty in an amount up to ten  
10 thousand dollars a day for every such violation.

11 . . . " RCW 90.48.144 (Emphasis added.)

12 and the cited RCW 90.48.080 provides:

13 "It shall be unlawful for any person to throw,  
14 drain, run or otherwise discharge into any of the  
15 waters of this state, or to cause, permit, or  
16 suffer to be thrown, run, drained, allowed to seep  
17 or otherwise discharged into such waters any  
18 organic or inorganic matter that shall cause or  
19 tend to cause pollution of such waters according  
20 to the determination of the department [of  
21 Ecology], as provided for in this Chapter."  
22 [Brackets added.]

23 The term "pollution" is defined at RCW 90.48.020 of the  
24 Act as:

25 ". . . such contamination, or other alteration  
26 of the physical, chemical or biological  
27 properties, of any waters of the state, including  
28 change in temperature, taste, color, turbidity, or  
29 odor of the waters, or the discharge of any  
30 liquid, gaseous, solid, radioactive or other  
31 substance into any waters of the state, as will or  
32 is likely to create a nuisance or render such  
33 waters harmful, detrimental or injurious to the  
34 public health, safety or welfare, or to domestic,  
35 commercial, industrial, agricultural, recreational  
36 or other legitimate beneficial uses, or to  
37 livestock, wild animals, birds, fish or other  
38 aquatic life."

VIII

Appellant Captain Raymond L. Leson, violated RCW 90.48.080 on December 21, 1985, by causing the discharge of matter into the waters of the State of Washington which caused the pollution of such waters. This made him subject to penalty under RCW 90.48.144 (\$10,000 maximum) on a strict liability basis.

IX

Penalty Procedure.

Appellant raises four challenges to respondent's procedure in assessing these civil penalties. We take these up in turn.

1. Regulatory standards. Appellant first urges that Department of Ecology lacks regulatory standards for the uniform and consistent exercise of its penalty powers. We disagree. In reviewing similar penalty powers lodged in an air pollution control authority, the Washington State Supreme Court has declared that:

The discretion as to amount is not significantly different from that exercised traditionally by courts in fixing the amount of fines. We, therefore, hold that there is nothing constitutionally impermissible in the procedure involved herein.

Yakima Clean Air Authority v. Glascam Builders, 85 Wn.2d 255, 262, 534 P.2d 33 (1975). Earlier in the opinion the court held that:

The penalties must be within normally acceptable limits. This, accompanied by procedural safeguards which control arbitrary administrative action, provides a constitutionally permissible delegation.

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1 Yakima, supra, at p. 258. The court went on to cite the right of  
2 appeal to this Board at p. 260. Finally, we note the penalty  
3 standards within the oil spill penalty provision, RCW 90.48.350  
4 relating to "gravity of the offense" and other factors. Similar  
5 standards apply in appeals stemming from the general water pollution  
6 penalty provisions, RCW 90.48.144.

7 We conclude that the Department has sufficient standards and that  
8 there are adequate procedural safeguards for the exercise of its  
9 penalty authority.

10 2. Enforcement Manual. Appellant next urges that if there is  
11 non-compliance with the Department's Enforcement Manual, the penalty  
12 is unlawful. Such non-compliance has not been proven, in that  
13 appellant has not offered the Manual into evidence. We decline to  
14 rely upon the Manual in any event as it lacks the force of law as  
15 noted in our Order for Reconsideration entered September 1, 1987.

16 3. Particularity. Appellant urges that the notice of penalty  
17 does not describe the alleged negligent violation with particularity  
18 as required by RCW 90.48.350. We disagree. The notice of penalty is  
19 particular as to the Department's factual and legal theory advanced in  
20 this matter.

21 4. Penalty to More Than One Person for Causing One Event.  
22 Appellant urges that a civil penalty may not be imposed against both  
23 himself and the ship's owner for causing a single oil spill. We  
24

1 disagree. It is fundamental that there may be more than one proximate  
2 cause of the same occurrence.<sup>5</sup> The civil penalty statutes at issue  
3 apply to any person who causes the proscribed water pollution. In  
4 pre-hearing motions we declined to issue summary judgment as to  
5 whether both Captain Leson and the ship's owner, Atlantic Richfield  
6 Company, could be assessed civil penalties for the same incident. The  
7 basis for our denial, however, lay in the then unresolved questions as  
8 to a) whether Captain Leson was negligent and b) whether the actions  
9 Atlantic Richfield Company (including the actions of Captain  
10 Sutherland) constituted a superseding cause of the incident. We have  
11 now resolved these questions by concluding negligence on the part of  
12 Captain Leson without superseding cause by any third party.  
13 Therefore, a civil penalty assessed against the Atlantic Richfield  
14 Company as ship's owner does not preclude a separate penalty against  
15 Captain Leson. Even the maximum penalty may be assessed to each of  
16 several wrongdoers for causing one event. In re: Alexis Shipping Co.  
17 v. State Department of Ecology, PCHB No. 297 (1977).

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19  
20 5 Washington Pattern Jury Instructions (Civil) WPI 12.04

21 There may be more than one proximate cause of the same  
22 occurrence. If you find that the defendant was negligent and that  
23 such negligence was a proximate cause of injury or damage to the  
24 plaintiff, it is not a defense that the act of some other person  
25 who is not a party to this lawsuit may also have been a proximate  
26 cause.

X

Amount of Penalty. RCW 90.48.350 sets out guidelines for determining the amount of penalty.<sup>6</sup>

1. "Gravity of the Violation." The ARCO Anchorage went aground through inattentive navigation. There was no storm, distraction or other extenuating circumstance to explain that inattention. The resulting oil spill was a major disaster. At the outset a serious danger of fire or explosion was posed by the spilling oil. Later, officials of the Atlantic Richfield Company, private clean-up contractors, United States military and civil personnel, state officials, local officials and many ordinary volunteers made a great and sustained effort to clean up the mess. Even so, the toll of birds and marine life was high and the spill was large enough for parts of it to be carried some 50 miles. This was a very grave violation.

2. "Previous Record of the Violator." No previous violations of the water pollution act, chapter 90.48 RCW, were shown.

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<sup>6</sup> The penalty guidelines under RCW 90.48.144 is "the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors." Applying these guidelines in this case leads us to the same conclusion as applying the guidelines from RCW 90.48.350 recited above.

3. "Other Considerations." As we have found, the use of a federal pilot in this instance was compulsory. (See, Finding of Fact IV, above.) Moreover, when the appellant assumed the Conn, or control of the vessel, he became responsible for the consequences of his commands. These commands were the primary cause of the grounding and oil spill at issue.

Notwithstanding the lack of prior record, we conclude that since appellant's actions were the primary cause of a very grave oil spill, the maximum civil penalty of \$30,000 is amply justified.

XI

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law, the Board enters this

ORDER

The \$30,000 civil penalty imposed in this matter is hereby affirmed.

DONE at Lacey, WA this 28<sup>th</sup> day of June, 1988.

POLLUTION CONTROL HEARINGS BOARD

Wick Dufford

WICK DUFFORD, Chairman

Lawrence J. Faulk 6/24/88

LAWRENCE J. FAULK, Member

Judith A. Bendor 6/28/88

JUDITH A. BENDOR, Member

William A. Harrison

WILLIAM A. HARRISON

Administrative Appeals Judge

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 86-110